

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KIMBERLY C. CUTONE and
ANTHONY CUTONE,

Plaintiffs,

v.

ELI LILLY AND COMPANY, et al.,

Defendants.

Civil Action No.: 1:04-cv-12725-JLT/MBB
Next Event: Mediation with Magistrate
Bowler on October 18, 2006 at 10:00 a.m.

**JOINT MOTION TO CONTINUE MEDIATION AND
TO STAY THE CASE FOR A PERIOD OF SIX (6) MONTHS**

COME NOW the parties, by and through counsel, and jointly move the Court to enter an Order both continuing the Mediation presently set for October 18, 2006 with Magistrate Judge Marianne Bowler and staying this matter for a period of six (6) months. As grounds therefor the parties state:

1. This is a products liability/personal injury case arising from plaintiff Kimberly Cutone's *in utero* exposure to diethylstilbestrol ("DES"). Among the injuries Ms. Cutone claims as a result of her *in utero* exposure to DES are infertility and the inability to carry a pregnancy to term.

2. On September 5, 2006, Magistrate Bowler entered an Order re-scheduling this matter for a Mediation Hearing on October 18, 2006 beginning at 10:00 a.m.

3. As of this date, plaintiffs' counsel has been advised by Ms. Cutone that she has recently become pregnant. After consultation with counsel for the defendant, all parties believe that, given the uncertainties surrounding the potential outcome of Ms. Cutone's pregnancy, that

the interests of justice and economy would best be served by staying this matter for a period of six (6) months, including the continuation of the Mediation for a period of six (6) months.

WHEREFORE, the parties respectfully request the Court enter an Order both staying the case and continuing the Mediation Hearing in this matter for a period of six (6) months.

Respectfully submitted,

TODD & WELD LLP

FOLEY HOAG LLP

/s/ Erica Tennyson

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Dated: October 17, 2006

/s/ James J. Dillon

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Attorneys for Eli Lilly and Company

CERTIFICATE OF SERVICE

I, Erica Tennyson, hereby certify that this Joint Motion to Continue Mediation and to Stay the Case for a Period of Six (6) Months filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 17, 2006.

/s/ Erica Tennyson

Erica Tennyson

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[PROPOSED] ORDER

UPON CONSIDERATION of the Joint Motion to Continue Mediation and to Stay the Case for a Period of Six (6) Months, and for good cause shown, it is this _____ day of _____, 2006,

ORDERED that the Motion be and hereby is GRANTED:

AND IT IS FURTHER ORDERED that the Mediation scheduled for October 18, 2006 is continued and this case stayed for a period of six (6) months.

MARIANNE B. BOWLER
United States Magistrate Judge

Respectfully submitted,

TODD & WELD LLP

FOLEY HOAG LLP

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